



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION

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DA 98-2434

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**Release: December 4, 1998**

## **Wireless Telecommunications Bureau Announces the Commencement of the Voluntary Negotiation Period for the Relocation of Incumbent Licensees in the 800 MHz Band**

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) announces the commencement of the one year voluntary negotiation period between Economic Area (EA) licensees and incumbent licensees in the upper 200 channels of the 800 MHz band. Pursuant to section 90.699 of the Commission's rules, if an EA licensee wants to relocate an incumbent licensee operating on frequencies included in the EA licensee's spectrum block, the EA licensee must, within 90 days of the release date of this Public Notice, notify the incumbent licensee of the EA licensee's intention to relocate the incumbent.<sup>1</sup> If an EA licensee fails to notify the incumbent licensee during this 90 day period of its intention to relocate the incumbent licensee, the EA licensee will forfeit the right to require the incumbent licensee to relocate at any time in the future.<sup>2</sup> The EA licensee's deadline for notifying incumbents of their intention to relocate is **March 4, 1999**.

EA licensees purchased geographic licenses for markets on Channel Blocks A, B, or C in Auction No. 16 for the upper 200 channels of the 800 MHz band (800 MHz auction).<sup>3</sup> Pursuant to section 90.699 of the Commission's rules, EA licensees have the right to relocate incumbent licensees in their respective channel blocks.<sup>4</sup> If an EA licensee wants to relocate an incumbent licensee, the EA licensee and the incumbent licensee may negotiate any mutually agreeable relocation agreement during the initial one year voluntary negotiation period.

If no agreement is reached by the end of the voluntary period, a one-year mandatory negotiation period will begin. During the one-year mandatory negotiation period, both the EA licensee and the incumbent licensee must negotiate in good faith.<sup>5</sup> Failure on the part of the EA

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<sup>1</sup> 47 C.F.R. § 90.699(b)(1).

<sup>2</sup> *Id.*

<sup>3</sup> *Public Notice*, 800 MHz SMR Auction Closes: Winning Bidders in the Auction of 525 Specialized Mobile Radio Licenses, 12 FCC Rcd. 20417 (1997).

<sup>4</sup> 47 C.F.R. § 90.699.

<sup>5</sup> 47 C.F.R. § 90.699(b)(1).

licensee to negotiate in good faith during the mandatory negotiation period will result in the forfeiture of the EA licensee's right to request involuntary relocation of the incumbent licensee at any time in the future.<sup>6</sup>

If no agreement is reached during either the voluntary or mandatory negotiating periods, the EA licensee may request involuntary relocation of the incumbent licensee's system.<sup>7</sup> If an EA licensee requests involuntary relocation of the incumbent, the EA licensee must guarantee payment of relocation costs, including all engineering expenses, equipment costs, site and FCC fees, as well as any legitimate and prudent transaction expenses incurred by the incumbent licensee that are directly attributable to an involuntary relocation, subject to a cap of two percent of the hard costs involved.<sup>8</sup> Hard costs are defined as the actual costs associated with providing a replacement system such as equipment costs and engineering expenses. EA licensees are not required to pay incumbent licensees for internal resources devoted to the relocation process.<sup>9</sup> EA licensees also are not required to pay for transaction costs incurred by incumbent licensees during the voluntary or mandatory periods once the involuntary period is initiated, or for fees that cannot be legitimately tied to the provision of comparable facilities.<sup>10</sup>

Sections 90.699(f)(2) and 90.699(f)(3) of the Commission's rules require an EA licensee to file with the Commission a copy of the relocation notice that the EA licensee sent to the incumbent licensee and proof that the incumbent licensee received the relocation notice within ten days after the EA licensee receives proof that the incumbent received the relocation notice.<sup>11</sup> An EA licensee must make this filing, in order to establish (1) its right to require an incumbent licensee to relocate, and (2) its reimbursement right under certain circumstances.<sup>12</sup> This filing also triggers the EA licensee's reimbursement obligation.<sup>13</sup> We encourage EA licensees to include a copy of the filing, marked date-stamp, along with a self-addressed envelope. The Commission will date-stamp the copy and return it to the EA licensee in the self-addressed envelope. We also encourage EA licensees to maintain a copy of each relocation notice and proof of each incumbent licensee's receipt of the relocation notice. EA licensees must send all copies of notices and proofs of receipt to Terry Fishel, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 1270 Fairfield Road, Suite 16, Gettysburg, PA 17325.

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<sup>6</sup> 47 C.F.R. § 90.699(b)(2).

<sup>7</sup> 47 C.F.R. § 90.699(c).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 47 C.F.R. §§ 90.699(f)(2), 90.699(f)(3). Although section 90.699 of the Commission's rules does not prescribe a specific means for EA licensees to notify incumbents, we encourage all EA licensees to provide notification to the incumbent licensee by certified mail, return receipt.

<sup>12</sup> 47 C.F.R. §§ 90.699(f)(2), 90.699 (f)(3); *see also 800 MHz Second R&O*, 12 FCC Rcd. at 19119, ¶ 110.

<sup>13</sup> 47 C.F.R. §§ 90.699(f)(2), 90.699 (f)(3); *see also 800 MHz Second R&O*, 12 FCC Rcd. at 19119, ¶ 110.

For further information contact: Don Johnson, Chris Gacek, or Yanic Thomas in the Commercial Wireless Division at (202) 418-7240.